

EXHIBIT E

14 of 49 DOCUMENTS

RALPH SCOTT VERSUS BAYER CORPORATION, ET AL.

CIVIL ACTION NUMBER 03-2888 SECTION "L" (2)

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
LOUISIANA**

2004 U.S. Dist. LEXIS 371

**January 12, 2004, Decided
January 12, 2004, Filed; January 13, 2004, Entered**

PRIOR HISTORY: *In re Phenylpropanolamine Prods. Liab. Litig.*, 2003 U.S. Dist. LEXIS 22530 (W.D. Wash., Nov. 5, 2003)

DISPOSITION: [*1] Defendants' Motion for Temporary Stay of Proceedings Pending Final Ruling of Judicial Panel on Multidistrict Litigation GRANTED.

LexisNexis(R) Headnotes

COUNSEL: For RALPH SCOTT, plaintiff: Stuart Housel Smith, Michael G. Stag, Raphael Juneau, Jr., Smith & Stag, LLC, Barry James Cooper, Jr., Cooper Law Firm, LLC, New Orleans, LA.

For BAYER CORPORATION, defendant: John Francis Olinde, Charles P. Blanchard, Mary Laura Meyer, Chaffe, McCall, Phillips, Toler & Sarpy, LLP, New Orleans, LA.

For WALGREEN LOUISIANA CO., INC. dba Walgreens, K&B OF LOUISIANA CORPORATION, defendants: T. Haller Jackson, III, Lemle & Kelleher, Shreveport, LA.

For WYETH, defendant: Edward J. Rice, Jr., Tyson B. Shofstahl, Adams & Reese, New Orleans, LA.

For NOVARTIS CONSUMER HEALTH, INC., defendant: Joy Goldberg Braun, Eric R. Nowak, Shirin E. Harrell, Sessions, Fishman & Nathan, LLP, New Orleans, LA.

For WINN-DIXIE LOUISIANA, INC., defendant: Paul M. Lavelle, Landry & Lavelle, L.L.P., New Orleans, LA.

JUDGES: Eldon E. Fallon, United States District Judge.

OPINIONBY: Eldon E. Fallon

OPINION: [*2]

ORDER & REASONS

Before the Court are (1) the Plaintiff's Motion to Remand and Request for Costs and Expenses Under 28 U.S.C. § 1447 and (2) the Defendants' Motion for Expedited Hearing of its Motion for a Temporary Stay of Proceedings Pending Final Ruling of the Judicial Panel on Multidistrict Litigation on Transfer of this Case to MDL-1407. The Defendants' Motion for Expedited Hearing of their Motion for a Temporary Stay of Proceedings is GRANTED. The Motion for a Temporary Stay of Proceedings will be considered at this time. For reasons set forth below, the defendants' Motion for Temporary Stay of Proceedings is GRANTED. Accordingly, the Plaintiff's Motion to Remand of this case to 29th Judicial District for the Parish of St. Charles is STAYED pending final ruling of the Judicial Panel on Multidistrict Litigation on transfer of this case to MDL-1407.

I. BACKGROUND

The present case is one of more than one thousand personal injury actions involving products manufactured and sold that contain Phenylpropanolamine ("PPA"). The Plaintiff has asserted claims for damages caused by products manufactured and sold by pharmaceutical manufacturers [*3] Bayer Corporation, Wyeth, f/k/a American Home Products f/k/a Whitehall Robbins Healthcare ("Wyeth"), and Novartis Consumer Health, Inc., and against the retailers/sellers of the drug Walgreen Louisiana Co., K&B Louisiana Corporation, Winn-Dixie Louisiana, Inc., and Eckerd Corporation.

Defendant Wyeth removed this action to the United States District Court for the Eastern District of Louisiana on October 15, 2003, claiming that the Plaintiff fraudulently joined the Louisiana-based retailer/seller defen-

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dants solely for the purpose of destroying diversity. The Plaintiff responds that the retail sellers and distributors were joined because they sold him over-the-counter products that contained PPA and that these products caused him to have a stroke. The Plaintiff moves the Court to remand the matter to the Twenty-ninth Judicial District Court for the Parish of St. Charles due to a lack of complete diversity.

The Defendants urge the Court to grant a temporary stay of the case pending a ruling of the Judicial Panel on Multidistrict Litigation and refrain from ruling on the Plaintiff's Motion to Remand at this time. The Defendants state that on November 11, 2003, this matter was submitted [*4] to the Judicial Panel on Multidistrict Litigation as a "tag-along" action. The Judicial Panel has yet to rule on whether or not to transfer this case to the MDL court.

II. LAW AND ANALYSIS

The decision to grant or deny a temporary stay of proceedings pending a ruling on the transfer of the matter to the MDL court lies within this Court's discretion. It is advisable, however, for a district court to defer the resolution of certain pretrial matters until the Panel renders a decision with regard to whether a case should be transferred to the MDL court. *See Manual for Complex Litigation* § 31.131, at 252 (3d ed. 2000) ("It may be advisable to defer certain matters until the panel has the opportunity to rule on transfer."). Deference to the MDL court for resolution of these matters provides the opportunity for the uniformity, consistency, and predictability

in litigation that underlies the multidistrict litigation system. *See 28 U.S.C. § 1407.*

The ability to stay proceedings "is incidental to the power inherent in every court to control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for [*5] the litigants." *Landis v. North American Co.*, 299 U.S. 248, 254, 81 L. Ed. 153, 57 S. Ct. 163 (1936). The Plaintiff will not be unduly prejudiced if proceedings in this Court, including hearing of the Plaintiff's Motion to Remand, are stayed pending a decision by the panel as to the transferability of this case. In addition, staying all proceedings in this case will serve the interests of judicial economy and minimize the risk of inconsistent rulings in related cases. The Court will exercise its discretion and stay all proceedings in this case pending a decision on the transfer of the case to the MDL court.

III. CONCLUSION

For the foregoing reasons, the Defendants' Motion for Temporary Stay of Proceedings Pending Final Ruling of the Judicial Panel on Multidistrict Litigation on Transfer of this Case to MDL-1407 is GRANTED. Accordingly, all proceedings in this case are STAYED pending notification by the Judicial Panel on Multidistrict Litigation of its decision.

New Orleans, Louisiana, this 12 day of January, 2004.

Eldon E. Fallon

United States District Judge